



Idaho's Citizen Commission for Reapportionment

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Public Meeting
Wednesday June 8, 2011
Capitol Building, Capitol Auditorium
2:00 pm

Chairman Frasure called the commission back from recess, and indicated that the first item of business was to finalize the public hearing schedule. Present were **Commissioner Lou Esposito, Commissioner Lorna Finman, Commissioner Evan Frasure, Commissioner Allen Andersen, Commissioner Julie Kane, and Commissioner George Moses**. Also present from the staff were **Keith Bybee, Kristin Ford, and Cyd Gaudet**.

Commissioner Moses then moved to keep the hearing schedule as set out by the legislative staff. **Commissioner Finman** then moved to change the schedule as follows:

June 14th Idaho Falls
June 15th Pocatello
June 16th Soda Springs
June 22nd Twin Falls
June 23rd Burley
June 24th Hailey
June 28th Sandpoint
June 29th Coeur d'Alene
June 30th Moscow
July 1st Lewiston

Commissioner Andersen then asked if there was a budget implication or impact of this proposed schedule. **Commissioner Finman** answered that one of the objects of changing the schedule was to do a few more public meetings, and to get the commission out into the rural areas. She pointed out that she is not going to be accepting her honorarium, and that these funds could be used towards the additional meetings. **Commissioner Andersen** then asked for a clarification on the budget implications of this schedule. **Chairman Frasure** indicated that the legislature has provided adequate funds to do their process and that with those funds they should have no problem adding these additional hearing dates. He stated that this was for the convenience of the public and that the commission wanted as much public input as they could get. He added that they felt it was appropriate to go into the rural areas, as well as the metropolitan areas, to get input from those citizens. He also discussed that the prior schedule had two meetings on the same day, and that an afternoon meeting in Idaho Falls was inappropriate as it appeared they would be rushing through that important area. He pointed out that the proposed schedule spreads it out into all evening meetings and allows more public input in eastern Idaho. He also discussed that the hearing in Soda Springs was added as this is a contentious area, and is where the law suits came from in the prior redistricting, and it was important to get input from the rural areas. He also indicated that they felt that one meeting in Twin Falls was rushing through that area, as one area of conflict could be in the Burley area. He also commented that they added the Hailey, Ketchum area to be kind to their Democratic colleagues and that it was appropriate to spend enough time in those areas to let those citizens know that the commission cared

about their opinion. As far as northern Idaho again they didn't want to rush through this area as it is important and they did not want to pick either Moscow or Lewiston alone as they both are important community centers, so they felt they should meet in both areas. He also explained that one of the first conflicts ten years ago was District 2 so it seemed appropriate to go to Sandpoint. He explained that the proposal is to expand the public hearings to allow the public more input into the reapportionment process. **Commissioner Andersen** asked if they anticipated the commission meeting on those days. **Chairman Frasure** indicated that there were a lot of people to meet with in those areas and that the commissioners would have full discretion to meet with constituents during the days prior to the public hearings, and that the hearings in the evenings are for the public's convenience, and that the day time would allow the commissioners to get out and see the lay of the land in those areas. **Commissioner Andersen** then asked when the travel would take place, for example from south east Idaho to northern Idaho you could not make it in a day because there is no direct air travel to that area. He was then inquiring if they would be looking at a day of travel before and after those meetings. **Chairman Frasure** suggested that the commission would fly in on Monday to get ready for the meeting on the 28th, and that the Spokane Airport was probably the most convenient and that it was just an hour and a half to Sandpoint from there. Then the following day they would be in Coeur d'Alene, and then for the next hearing it would be a leisurely drive to Moscow and then to Lewiston was about 20 miles.

Commissioner Andersen then moved that a request be added to the substitute motion that the staff provide the commission with a budgetary impact report on the proposed schedule. **Chairman Frasure** at that time called on **Keith Bybee** to discuss the budget. **Keith Bybee** estimated that the compensation for the meeting days, as proposed, would cost just over \$9,300 of the \$18,000 budgeted, so there is some flexibility there. He also indicated that the travel budget is \$27,000, which can be used for meeting rooms and hotel accommodations, so he felt that they would be well within the budget.

Commissioner Kane then indicated that she appreciated wanting to expand the number of public hearings, however she pointed out that she had already requested leave from her position for the original schedule and that it would be difficult to change that. She also pointed out that she believed afternoon meetings would be efficient, that if the public had advance notice they could get to those meetings, and that having this many meetings would mean that she would miss the entire month of June, and that she can't miss that much time from work. **Chairman Frasure** indicated that he appreciated the concern; however the original schedule was just a proposal. He pointed out that the purpose of that day's meeting was to set the schedule, that the commission has only 90 days to complete their plan and that they need as much public input as possible to do this. He also indicated that the budget will accommodate the additional meetings and that he believes that evening meetings afford a much better opportunity for the public to testify.

Commissioner Andersen then asked **Mr. Bybee** about the budgetary difference between the original schedule and the schedule now proposed. **Commissioner Finman** advised that she was not taking any per diem or travel costs in addition to not taking an honorarium. **Mr. Bybee** indicated that the difference in commissioner compensation would be an additional \$1,875, and that on the travel side it would depend on airfare, and that he would have to look into using the State plane. Overall he stated that he felt they would still be within budget.

Commissioner Andersen then pointed out that the commission does have a duty to gather as much information as possible, however given that the legislature slashed budgets in all areas this session, he feels that the commission needs to be prudent and cautious in spending funds over and above what is already planned.

Commissioner Moses then asked about the distance from Soda Springs to the next hearing location, and was told that it was about 65 miles. He then indicated that going on first impression of the proposed schedule, that given the number of people at the Boise public hearing he was concerned about setting meetings this physically close together. He stated that it strikes him that they may be getting a little excessive in spending this amount of time out of town to hold hearings 60 miles apart and suggested that perhaps they could find a mid point in between Sandpoint and Coeur d'Alene. He indicated that he felt the same way about Moscow and Lewiston, and that he was afraid, that from the outside, the commission runs the risk of being accused of using their office to go junketing and he would not like to answer to that. He suggested that the commission could find a more efficient schedule, and although money is available in the budget it doesn't mean that it has to be spent. He suggested that they can save their resources for other things that the state may need without damaging their ability to do what they have to do and give opportunity for the people of Idaho to have input into this process. He agreed that there is merit to the question about day time hearings however he feels they can do this more efficiently then proposed.

Chairman Frasure then reminded the commission that they are setting the schedule and that what was done ten years ago is something to look at however it does not lock them into a schedule. He also noted that from some of the comments from last time that scheduled seemed a little rushed with concentration in the major cities. He then commented regarding Soda Springs being 60 miles from Pocatello that this was a fair point and that perhaps they should move the hearing to Montpelier so they were out 90 miles. He reminded the commission that this is for the convenience of the citizens out there and wouldn't mind if this hearing was in Preston, Montpelier, or Soda Springs, and that it is a small price for them to travel down the road to hear what these people have to say. He indicated that the more hearings and public input they receive is money well spent, and that for something that is going to affect the state for the next decade a few thousand dollars spent now could make a lot of difference in servicing these people. **Commissioner Esposito** then stated that the additional

meetings would hopefully serve the purpose of involving enough people, in this process, to potentially limit the number of lawsuits they may receive. He said that in looking at the expense that the State incurred last time, on the lawsuits regarding the plans, that getting enough public input would go a long way to help the commission in making their case, if they end up before the Idaho Supreme Court. He also said that although one may want to characterize this as junkets, he sees it as an opportunity for them to manage this up front, to get valued input from the public. He indicated that then as they enter it into their work they will be able to point to the public input and be able to work through the plans in such a way that they get agreement, and that they end up with the very best plan for the State. He said that he didn't see how getting additional public input harms anything, and as they saw during the last legislature, people do want to turn out and voice their opinions on important topics. He stated that the commission has the opportunity, with something that happens only once in ten year, to reach out to the public in such a way that they do not have to travel to a metropolitan area to give input. He further stated that regardless of how you set the dates, the commission does need to set additional dates, in additional towns, and that he is hopeful that they will be able to set additional hearings in July for the Eagle, Meridian, Marsing or Emmett areas.

Chairman Frasure then asked **Commissioner Esposito** if he wanted to add a July schedule to the motion, and it was agreed that they would concentrate on June at this time. **Commissioner Andersen** then indicated that he would like the time to caucus regarding the schedule. With that **Chairman Frasure** recessed the meeting until 2:30pm.

Chairman Frasure called the meeting back to order at 2:35 pm. At that time **Commissioner Finman** indicated that she would like to withdraw her substitute motion. **Commissioner Moses** also indicated that he would like to withdraw his original motion. **Chairman Frasure** indicated that they would have deliberations on the calendar at a later date.

Chairman Frasure then moved to proceed to the adoption of Policies and Procedures. He pointed out that the prior commission had Policies and Procedures; however, this commission is here to adopt their own. **Commissioner Andersen** moved that the commission consider each item separately.

Chairman Frasure then asked for any discussion on item #1. **Commissioner Moses** moved for adoption of item #1 as presented, and **Commissioner Andersen** called for a question. As all were in favor Section #1 was adopted.

Commissioner Moses moved for approval of item #2 as presented. As all were in favor Section #2 was adopted.

Commissioner Moses then moved for approval of item #3 as presented. **Commissioner Finman** indicated she would like to make a motion to include a reference to the legal statute in item #3. **Chairman Frasure** indicated that this would be Idaho Code 72-1506 as part of their policy which outlines the nine criteria that the commission is required to have in the process.

Commissioner Moses indicated that he appreciated the desire for specificity; however, in this case there are number of legal obligations that they have, and not all of them are in the Idaho Code or the Idaho Constitution. Given this he was afraid if they start listing legal sources they would end up with a very large document. **Commissioner Finman** was asked to expand upon her proposal at which time she stated that as they needed to be following the law she felt they should refer to the Idaho law and the code. **Commissioner Andersen** asked if this would include a reference to the court cases as well as Idaho Code and other factors. **Commissioner Finman** indicated no that she was just suggesting a reference to 72-1506. **Commissioner Moses** stated that he was unclear why they would need to cite only one of the sources of the laws which they are bound by.

Chairman Frasure indicated that the Idaho Code is clear in the criteria for the commission, and noted that the prior commission chose to ignore those criteria as witnessed in the testimony from the prior commissioners. For an example he noted that in Idaho Code 72-1506 paragraph 8 it states that counties shall not be divided to protect a particular party or incumbent, and that they had testimony the previous day, from the prior commissioners, that they drew a district in Twin Falls to protect the incumbent Republican Senator Laird Noh. He suggested that it would be good to have the statutes, which give nine direct guidelines, as part of their Policies and Procedures, in front of them as they draw their plans. He indicated that he understands that they are guided by the Idaho and U.S. Constitution, which they are sworn to uphold, however they would like to have it crystal clear that they are following the code, and not violating it, so it would be prudent to have the code as part of their Policies and Procedures.

Commissioner Kane stated that it was fine that they include that; however, she thought that if they were going to include the Idaho Code that they should also included the state and federal constitution and case law citations. She indicated that she felt the way that the section is worded now really covers everything in saying they will comply with the law and meet the minimum standards in the guidelines as adopted by the commission. She indicated that although she does not have any problem with specificity she agreed with **Commissioner Moses** that if they were going to include the Idaho Code that they would also have to include citations to the state and federal constitution as well. **Chairman Frasure** indicated that he appreciated **Commissioner Kane's** opinion and indicated that the Idaho Statutes are very clear and they would help the public understand the guidelines however he would not have any problem in referencing the state and federal constitutions. **Commissioner Moses** indicated that the provision requires them to comply with the law and if they cite a specific law they invite speculation that this is the only law that they have to follow even though there are number of statutes that bind their conduct, and that is why policies and procedures are generally held in a different document from the statutes. He stated that he was afraid that they run

the risk of confusion if they start picking and choosing which laws to cite with there are others than apply. **Chairman Frasure** indicated that it was fine if they wanted to cite any other sections that directly apply, as this was the only section that he knows about that pertains to reapportionment, and it seems prudent to put them in their policies. **Commissioner Kane** then suggested adding to this section that they would comply with state and federal constitutions as well as state statutes and applicable case law. She then requested an amendment to the motion that in addition to Idaho Code that the policy references the Idaho and U.S. Constitutional requirements as well as relevant case law. **Chairman Frasure** indicated that as long as this section included the actual Idaho Code wording then the other wording could be included. **Commissioner Finman** then requested an additional amendment to the substitute motion that live links be attached to the commission's website with the previously discussed information. **Chairman Frasure** then stated the amended substitute motion as stating that the commission expects that the redistricting plans submitted for their consideration comply with the law, and there have the links to the Idaho Statute 72-1506, the Idaho Constitution, the federal Constitution, and pertinent cases. As all were in favor, section #3 was adopted as amended. **Ms. Ford** then inquired as to the cases which the commission would like included, and was advised, after discussion, to use the citations which Professor Moncrief had referred to in his presentation, along with the wording *not limited to*.

Commissioner Andersen then made a motion to approve section #4. As all were in favor #4 was adopted.

Commissioner Andersen then made a motion to approve section #5. As all were in favor #5 was adopted.

Commissioner Andersen then made a motion to delete the proposed change on section #6. **Commissioner Moses** asked for input on why they would want to take up staff time to contact each individual or group making a submission regardless of its utility or validity, as he didn't see the argument for that. **Commissioner Esposito** indicated that in verifying this information it would help the commission organize plans so they could be identified and grouped as to the individual or group that was submitting them. He thought this would be helpful as this would identify what part of the state they came from, and to have as much transparency of the process as possible. He pointed out that just like letters to the editor there is validity in confirming who is submitting information or input. He suggested that this would be a straightforward process for the staff in using the contact information provided, and that if it came to be a burden he assumed the staff would come to the commission and advise them of such, at which time it could be discussed.

Commissioner Moses agreed that they don't want anonymous submissions; however he was concerned with conservation of resources, and does not see the need to verify plans that are not going to be used. **Commissioner Andersen** suggested that plans be verified if there was a question of authenticity as it did not make sense to authenticate every submission. He then asked the staff if there had been a problem with submitted plans in the past. **Ms. Ford** advised the commission that the previous commission did have every plan verified, and that there were no false submissions identified. **Commissioner Esposito** indicated that there was precedence for this, and in case they do end up in court it would behoove them to make sure that they have full transparency and proper documentation of all the plans submitted to the commission. **Commissioner Andersen** then asked what constituted verifying authenticity. **Commissioner Esposito** indicated that a simple phone call from the staff to verify the number and contact information should be enough, and if the staff was unable to reach the party then the commission would be within their rights to ignore the plan as it did not meet the criteria. There was then some discussion regarding the difference between section 5 and section 6. After further discussion regarding the wording of this section and at the suggestion of Chairman Frasure, **Commissioner Moses** made a substitute motion to change #6 to read that the commission staff will contact each individual or group having submitted a proposed plan to verify the authenticity *at the request of any commissioner*. As all were in favor #6 was adopted as changed.

Commissioner Kane then made a motion to approve section #7. As all were in favor #7 was adopted.

Commissioner Andersen then made a motion to approve section #8. **Commissioner Moses** then brought up a discussion from the prior day regarding IPTV's recording of the commission and how they could make use of those and he was trying to recall what was decided.

Chairman Frasure indicated that they had a few questions in this area regarding establishing their records quite well in case they were to go before the Supreme Court. He questioned the wording "summary minutes" and indicated that they do approve their own minutes. He indicated that the tricky portion comes in that the minutes become the official record of the hearing and it is a bit of a stretch to say that a video is an official record. This led to a discussion regarding the taping of the commission and it was verified that the commission meetings were being recorded. He suggested that they could be very generous in what they included in the minutes and that he didn't mind having large minutes, and he didn't think they could say that an official part of their minutes was a video. **Commissioner Esposito** indicated that he felt that they could go with normally prepared minutes, and then state that they would maintain the recordings, and this should suffice.

Chairman Frasure indicated that as long as they have the recordings and the minutes, and that he was not opposed to what anyone wanted to have included in the minutes, so the minutes, which they would approve in the normal process, would be the official document.

Commissioner Kane then called for the question. As all were in favor #8 was adopted.

Commissioner Kane then explained that the changes to section #9 reflected what the commission had discussed with Mr. Kane, of the Attorney General's office, the day before, and she then read the wording. **Chairman Frasure** then questioned the wording regarding the Attorney General's office compiling findings of fact and actions, and felt this was the Commission's role. **Commissioner Kane** agreed with the question on this wording and indicated that she would change it to reflect that the Attorney General's representative would provide

"advice and guidance in and between meetings to assist the commission in developing a solid set of findings, justification to provide to the Supreme Court" when submitting final plans. As all approved #9 as adjusted, it was approved.

Commissioner Andersen then made a motion to approve section #10. As all were in favor #10 was approved.

Commissioner Andersen then made a motion to approve section #11. As all were in favor #11 was approved.

Chairman Frasure then indicated that the next section should be numbered as section #12. He then discussed that he wanted this section to reflect that each side of the commission have control over their own staff, and that part of the budget, and he indicated that he didn't think this was reflected in this section. After some discussion the commission was recessed until 3:40 pm.

The commission reconvened at 3:40 pm at which time it was decided that the first line of #12 be removed. As there was no objection #12 was adopted as changed.

Commissioner Finman then made a motion to add a new #13 which states that each side would control their own partisan staff and budget. **Commissioner Andersen** then asked who contracts with the partisan staff. **Chairman Frasure** indicated that Legislative Services hires the staff at the commission's direction. He indicated that they have a budget for this and that each side pays their staff different amounts. **Commissioner Andersen** then asked if each side had the same amount budgeted for their staff and he was told that this was correct. It was discussed that each side has the same budget and has the right to spend it as they see fit. As all were in favor #13 was adopted.

Chairman Frasure then read what is now section #14. **Commissioner Andersen** then made a motion to approve #14 with discussion. He then asked if there was a problem with not having seconds on motions. **Chairman Frasure** advised him that even in the large committees in the House they do not require a second anymore, and that there is no requirement in Mason's Manual that small committee settings need a second. He also pointed out that they will want a second when they are considering final plans. **Commissioner Andersen** then indicated he would support the motion which had been made. As all approved #14 was approved.

Chairman Frasure then read section #15. **Commissioner Kane** then made a motion to approve section #15. As all were in favor #15 was approved.

Chairman Frasure then read section #16. **Commissioner Andersen** made a motion to delete #16. **Commissioner Moses** indicated that the commission has a constitutional requirement, and some legal requirements, regarding the number of votes needed to pass anything. He indicated that this section would not change that; however it may keep the commission from doing business in case of someone's personal or professional obligations or emergency. He pointed out that all deliberative bodies tolerate absences of some sort from time to time and he felt the commission should have the flexibility to do that. He further indicated that deleting this in no way changes the number of votes needed to adopt anything. **Commissioner Esposito** indicated that he believed #16 was vitally important as it addresses the culmination of the work that they are doing. He stated that he didn't see how the commissioners would want to have a vote on a final plan, either Legislative or Congressional, without the full commission present. He also indicated that he realizes that they need a minimum of four votes for any motion to pass; however, in due respect for all of the commissioners' time and effort he would hate to see a vote take place where one of the commissioners was not present and not allowed to give input. **Chairman Frasure** recalled one time when he was a chairman in the Legislature where he held up meetings until one of the legislators was able to get there, and discussed the "what ifs" if two commissioners were gone, and the reasons that this section was added. There was some discussion regarding voting via electronic means; however, **Ms. Ford** pointed out that Idaho Code 72-1505, paragraph 6, indicates that a member must be present to vote. **Commissioner Moses** then indicated that 3 commissioners can decide to postpone business until a missing commissioner returns, so if a vote is that important they can deal with that and not lock themselves into a rigid solution. **Chairman Frasure** then discussed how, from a partisan position this could cause problems; however, **Commissioner Moses** pointed out that you can't pass a plan without a fourth vote. **Commissioner Kane** then expressed that she hoped that all of the commissioners would be respectful enough of each other that if one side did not want to vote on a plan at that time, that the other side would be respectful enough not to do it. **Commissioner Andersen** then called for the question. As all were in favor to strike #16, #16 was removed.

Commissioner Andersen then moved to suspend discussion on #17 until the discussion regarding the calendar was concluded. **Chairman Frasure** then asked the staff to clarify what would be considered a working day in the secure rooms. **Mr. Bybee** indicated that he needed to do a little further investigation regarding the eligible days for the commissioner's honorarium.

As there was no objection **Chairman Frasure** recessed the commission until 7:00 pm that evening in Caldwell.